

Jorgensen, Jay T.

From: Jorgensen, Jay T.
Sent: Tuesday, June 17, 2008 1:45 PM
To: 'Ward, Liza'; 'David Page'
Cc: 'Bond, Michael R.'
Subject: RE: Following up on your call

Liza,

I have checked with the other defendants and they agree that the Motion to Compel is well founded. The model-related materials produced by the state do not comply with the plaintiffs' discovery obligations because they are not in a form that is reasonably usable. For that reason, we requested that plaintiffs produce exact copies of the models in the form they are maintained by plaintiffs. We have conferred with plaintiffs on this matter multiple times in an effort to obtain the information that the plaintiffs were required to previously produce. As only one example, during the week of June 2-6 I spoke with David Page on the phone about this several times and asked if plaintiffs would produce the models in the same format they are maintained by the plaintiffs' experts. He refused, stating that such a production is not (in his view) technically feasible because portions of the plaintiffs' models reside on three separate computers.

However, defendants always want to resolve issues without court intervention. It is possible that we will be able to overcome the obstacles created by plaintiffs' production if the plaintiffs provide additional information about your models and the way they are maintained. Would you be willing to answer the following questions? If so, I can commit that defendants will take this information to their experts in an attempt to resolve the uncertainties addressed in the Motion to Compel. If those uncertainties are resolved, we may be able to withdraw the motion:

1. What were the different computers (manufacturer, model number, CPU type and operating system) used by Dr. Wells for the calibration and scenario runs described in his expert report?
2. What were the FORTRAM compiler options used by Dr. Wells to create the executables for these calibration and scenario runs?
3. Was the model executable currently on the Portland State University website: <http://www.cee.pdx.edu/w2> (for Version 3.6) the executable used for these calibration and scenario runs?
4. There are multiple calibration run directories in the modeling documents produced. Which calibration run directory (e.g., Run 200, 201, 202, etc.) corresponds to the calibration results in Dr. Wells' expert report?

Jay

From: Ward, Liza [mailto:lward@motleyrice.com]
Sent: Tuesday, June 17, 2008 12:02 PM
To: Jorgensen, Jay T.
Cc: Bond, Michael R.
Subject: RE: Following up on your call

Jay,

We still haven't heard anything from you regarding Defendants' position on the State's Motion to Strike. Unless I hear from you by 3 p.m. (Eastern), we will assume that the remaining Defendants share Tyson's position that they object to the relief sought by the State's Motion to Strike and will file the same.

7/7/2008

Thanks.

Elizabeth "Liza" C. Ward | Attorney at Law | Motley Rice LLC
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From: Jorgensen, Jay T. [mailto:jjorgensen@sidley.com]
Sent: Monday, June 16, 2008 12:00 PM
To: Ward, Liza
Cc: Bond, Michael R.
Subject: Following up on your call

Liza,

Thanks for speaking with me this morning. To summarize our conversations, you asked whether defendants would be willing to withdraw their motion to compel production of working copies of plaintiffs' models. If not, plaintiffs intend to file a motion to strike. The grounds for the motion are that plaintiffs believe they are still meeting and conferring with defendants on this issue.

I told you I would pass this request on to the other defendants, since the motion was filed on behalf of all of them. I have passed on your request, and will let you know as soon as I have received a response from each of the defendants.

Jay

Jay T. Jorgensen | Sidley Austin LLP
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7/7/2008

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